



The Wisconsin Court System

September 2001



State v. Cherise A. Raflik

Case Number: 00-1086-CR

Oral Argument: September 12, 2001; 9:45 a.m.

Printable PDF of Case Summary

This is a certification from the Wisconsin Court of Appeals, District II (headquartered in Waukesha). This means that the Court of Appeals, rather than issuing its own ruling, asked the Wisconsin Supreme Court to take the case directly. The Court of Appeals certifies cases that cannot be decided by applying current Wisconsin law. The Supreme Court is the state's law-developing court while the Court of Appeals is responsible for correcting errors that occur in the trial court. The case originated in Washington County Circuit Court, Judges Annette K. Ziegler and Leo F. Schlaefel presiding.

In this case, the Wisconsin Supreme Court will decide what the appropriate remedy should be when there is a procedural mistake made in issuing a search warrant.

Here is the background: In the early evening hours of Aug. 4, 1998, the Washington County district attorney called a Washington County Circuit Court judge seeking a search warrant for Cherise Raflik's residence and unattached garage. The warrant was to look for drugs and drug paraphernalia. The district attorney placed the call from the Village of Germantown Police Department and did not use his recording equipment because the police mistakenly believed that the phone line he was using was being recorded.

The judge took sworn testimony from a detective over the phone, found that probable cause existed, and authorized the search warrant.

When the district attorney requested an audiotape of the phone conversation the next day, he was told that the conversation had not, in fact, been recorded. He informed the judge, who scheduled a hearing and directed the

district attorney to have the detective prepare an affidavit detailing what the detective remembered having said during the telephone hearing. In the affidavit, the detective acknowledged that he could not remember everything he had said while applying for the search warrant but he reconstructed the conversation as best he could.

The judge held a hearing and found that the reconstruction of the conversation was good enough to create the record necessary to make the search warrant valid.

Raflik was charged with various drug offenses. She filed a motion to suppress the evidence that had been seized under the search warrant, contending that failure to audiotape the conversation prejudiced her ability to challenge whether there had been probable cause to issue the search warrant. The judge (a different Washington County Circuit Court judge) found that the failure to audiotape the proceeding did not affect Raflik's rights. The case went forward, and she was convicted.

Raflik appealed, and, because it could not find any clear answer in Wisconsin law, the Court of Appeals certified the case to the Supreme Court. The Supreme Court will decide whether the evidence should have been thrown out because of the absence of an audiotape of the proceeding.